

### **REMARKS**

Applicant appreciates the Examiner's review of the present application and respectfully requests reconsideration in view of the preceding amendments and the following remarks. Claims 1-14 are pending in the application. Claims 3-8 and 11-14 are withdrawn from consideration based on Applicant's election in response to the Examiner's restriction requirement. Claims 1-2 and 9-10 have been amended in the present amendment. Support for the amended claims can be found throughout the specification, for example, at page 10, lines 15-20, page 18, Example III, page 8, lines 4-9, and page 26 lines 5-6.

### **Priority**

The Examiner stated that an application in which the benefit of an earlier application is desired must contain specific reference to the prior application in the first sentence of the specification. In response, the specific reference to a provisional application which priority is claimed by the present application has been added in the present amendment.

### **Claim Objections**

Claim 9 was objected to because of the typographical error of "silica-containing". This typographical error has been corrected in the present amendment. Hence, withdrawal of the objection to claim 9 is respectfully requested.

### **Claim Rejections under 35 U.S.C. § 112**

Claims 1,2,9 and 10 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. Specifically, the Examiner stated claims 1,2,9 and 10 were unclear and confusing in the recitation of "silica containing solid". This term has been amended to "solid silicates" which would overcome the indefiniteness of these claims.

The Examiner further stated that claim 9 was unclear and confusing because it recites a method step of removing the aluminum from a silica, however, claim 1 was a product, not a method. Further, silica did not inherently comprise aluminum, and it was unclear if a composition comprising silica and not containing aluminum would inherently meet the limitations of this claim. In the presently amended claim 9, the solid silicate in claim 1 is further recited to be "dealuminated or partially dealuminated aluminosilicates", which is a further limitation to the product in claim 1. Hence, Applicant believes this rejection of indefiniteness has been overcome by the present amendment.

Claim 10 was further rejected because the recitation of "pores" lacked explicit antecedent basis. In the presently amended claim 10, the antecedent basis of term "pores" has been created. Hence, this rejection has also been overcome.

#### **Claim Rejections under 35 U.S.C. § 102**

Claims 1, 2, 9 and 10 under 35 U.S.C. § 102(b) are further rejected as being anticipated by Dorn et al. (U.S. Patent 4,927,750). Dorn describes a silica composition with the preferred particle size of about 30-220 Angstroms (column 2, lines 15-17) and as large as 600 Angstroms (column 6, line 66).

In response, claim 1 has been amended to recite "solid silicates in crystalline or semicrystalline form " and " a pharmaceutically active agent".

Dorn is directed to a cell separation process which specifically refers to a colloidal silica. The recitation of "solid silicates in crystalline or semicrystalline form" in the presently amended claim 1 does not encompass gels or colloids of silica. Since Dorn fails to disclose each and every element of claim 1, it cannot anticipate the presently amended claim 1 under 35 U.S.C. 102(b).

Claims 1, 2, 9 and 10 were also rejected under 35 U.S.C. § 102 (b) as being anticipated by Bollen et al. (U.S. patent 4,029,631) as evidenced by Dorn et al. Bollen is directed to a method of producing transparent sheets formed from blends of polyethylene terephthalate and polycarbonate resins containing an antiblock agent. An amorphous silica prepared by the hydrolysis of silicon tetrachloride is used as an antiblock agent. The silica has a particle size of about 2 to 6 microns (see claim 5-6, column 3, lines 31-31). Therefore, the Examiner stated that claims 1, 2, 9 and 10 were anticipated by this disclosure.

Bollen discloses a transparent sheets comprising an amorphous silica. But Bollen does not disclose any solid silicates in crystalline or semicrystalline form in the presently amended claim 1. Hence, Bollen cannot anticipate the presently amended claim 1 under 35 U.S.C. 102(b) because it fails to teach each and every element of the presently amended claim 1.

For the same reason, claim 2,9 and 10, which are dependent claims of claim 1, would also not be anticipated by Dorn or Bollen under 35 U.S.C. 102(b).

Accordingly, Applicant respectfully requests withdrawal of the anticipation rejection to claims 1, 2, 9 and 10.

Therefore, Applicant believes that claims 1, 2, 9 and 10 are now in condition for allowance. Early and favorable action is respectfully requested.

It is believed that no other fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,  
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## AMENDMENTS TO THE SPECIFICATION AND CLAIMS SHOWING CHANGES

### In the Claims:

1. (Amended) A pharmaceutical composition for therapeutic or prophylactic use comprising a solid silicate in crystalline or semicrystalline form, wherein the solid silicate has [a silica containing solid having] an average particle size of about 6 microns or less.
2. (Amended) The pharmaceutical composition according to claim 1 wherein the solid silicate [silica containing solid] is selected from the group consisting of zeolites, [silicas,] clays, double hydroxides, silicalites, and mixtures thereof.
9. (Amended) The pharmaceutical composition according to claim 1 where the solid silicates are dealuminated or partially dealuminated aluminosilicates [silica containing solid is dealuminated].
10. (Amended) The pharmaceutical composition according to claim 1 where the solid silicates have pores, the pores or the surface of the solid silicates [the pores of the silica containing solid] are modified by silanation, methylation, surfactant adsorption or other chemical reaction to change the wettability, particle charge or size of the pores.